

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

AMAZON.COM, INC and AMAZON DATA SERVICES, INC.,)	
)	
Plaintiffs,)	Case No. 1:20cv484
)	
v.)	Hon. Rossie D. Alston, Jr.
)	Hon. Ivan D. Davis
WDC HOLDINGS LLC d/b/a NORTHSTAR COMMERCIAL PARTNERS, et al,)	
)	
Defendants,)	
)	DEFENDANTS’ BRIEF IN SUPPORT OF THEIR MOTION TO ALLOW A JURY VIEW OF DATA CENTER SITES AT ISSUE
800 HOYT LLC,)	
)	
Intervening Interpleader Plaintiff,)	
)	
v.)	
)	
BRIAN WATSON, et al.,)	
)	
Interpleader Defendants.)	
)	

Defendants Carleton Nelson, Cheshire Ventures, LLC, Brian Watson, WDC Holdings LLC dba Northstar Commercial Partners, NSIPI Administrative Manager, Sterling NCP FF, LLC, Manassas NCP FF, LLC, Casey Kirschner, and Rodney Atherton (“Defendants”), through undersigned counsel, state as follows in support of their Motion to permit a jury view of one or more of the data centers and sites at issue in this action.

Amazon has brought claims related to the construction and development of eleven data center cites in this district. Amazon claims that two former Amazon employees, Mr. Nelson and Mr. Kirschner, who were part of Amazon’s real estate team, selected developers who were willing

to pay kickbacks to them in exchange for the right to develop the data centers. The evidence at trial will demonstrate this is not the case. Nevertheless, based on the evidence and testimony Amazon has put forward to date it is clear Amazon intends to argue that evidence of this alleged scheme can be found in the fact that neither Northstar Commercial Partners nor Blueridge Group had ever developed a data center prior to Amazon. Defendants will present evidence that Northstar and Blueridge successfully completed Amazon's due diligence process and that Amazon knowingly contracted them the right to develop the respective data centers at issue, but another component critical to this issue is understanding that a data center is nothing more than a large industrial shell of a building, as Amazon tends to control the actual technical buildout inside the shell once it is developed.

Amazon's claims are premised upon an impression that data center development is somehow so unique or special that it can't possibly be that a development company that regularly developed other commercial property such as warehouses or shopping centers (both Northstar and Blueridge had extensive development experience in these other type of commercial/industrial buildings) was suitable to develop a data center. The best way for the jury to make a determination on this issue is to see the data centers themselves. While video evidence, such as drone footage, could show the jury this, it is Defendants' understanding that Amazon has security around its data center sites and that attempting to film such footage (especially footage that would be clear and concise for the jury to view) could potentially result in a security situation that Defendants would like to avoid. Importantly, there is no need to tour the inside of the facilities, which are built out by Amazon and have no bearing on the argument Amazon has advanced.

A jury view of the sites of the data centers at issue would also be relevant and useful to show the jury just how limited the area is where the land is most desirable to build data centers in

Northern Virginia. Specifically, [REDACTED] are the [REDACTED]
[REDACTED] as they offer [REDACTED]
[REDACTED]

and more. *See* Ex. A (filed under seal); https://aws.amazon.com/about-aws/global-infrastructure/regions_az/ (last visited March 31, 2023). Amazon intends to tell the jury that it would never have proceeded with any of the transactions at issue had it been aware of the conduct it alleges in this action. Evidence will show that Amazon closed not one, but two of the transactions at issue well after it launched its “immediate and extensive” investigation, wholly undermining this claim. But Defendants also wish to show that this claim is further undercut by Amazon’s strong desire to keep up with demand, and the truly limited options available to do so in the most desirable availability zones in Northern Virginia. Defendants intend to use both summary and demonstrative exhibits, including Google Earth files to demonstrate the location of Amazon’s data centers to make this point to the jury, but seeing the limited area firsthand will help the jury put these claims by Amazon in context.

The visit should not present logistical difficulties, as data center sites at issue are conveniently located near the Dulles airport, just off of major highways in this district. Defendants also do not believe that the jury would have to view all the sites at issue in order to appreciate both the nature of the buildings constructed by Northstar, as well as the lack of available land in the opportunity zones at issue. Nor do Defendants request that jurors be allowed to see the inside, or enter any of the data centers themselves; a request to which Defendants expect Amazon would have more of an objection to than simply viewing the exterior of the sites. Finally, Amazon should have no objection to this request, since one of the bases upon which it opposed Nelson’s motion to transfer this case to the Western District of Washington was Amazon’s claim that “a ‘view of

the premises' might well be necessary to assess Amazon's claims of site related malfeasance." Dkt. 211 at n. 6.

Wherefore, Defendants respectfully request that during their presentation of the evidence the Court permit a site visit by the jury to one or more of the data center sites at issue in this action.

Dated: March 31, 2023

Respectfully submitted,

BURR & FORMAN LLP

/s/ Rachel Friedman

Rachel Friedman (VA Bar #93898)
420 North 20th Street, Suite 3400
Birmingham, AL 35203
Telephone: (205) 251-3000
Facsimile: (205) 458-5100
rfriedma@burr.com

J. Alex Little, IV (TN Bar No. 29858) (*pro hac vice*)

Emily H. Mack (TN Bar No. 31217) (*pro hac vice*)
222 2nd Ave. S., Suite 2000
Nashville, TN 37201
Telephone: (615) 724-3200
alex.little@burr.com
emack@burr.com

/s/ Adam R. Smart

Adam R. Smart (FL Bar No 1032572) (*pro hac vice*)

50 North Laura Street, Suite 3000
Jacksonville, Florida 32202
Telephone: (904) 232-7200
asmart@burr.com

Attorneys for Carleton Nelson and Cheshire Ventures, LLC

Stanley L. Garnett
Amanda K. Houseal
Sara R. Bodner
Leah Regan-Smith
Rosa L. Baum
Brownstein Hyatt Farber Schreck LLP
410 Seventeenth St., Suite 2200
Denver, CO 80202-4432

/s/ Jeff Hamlin

George R. Calhoun
Jeffrey Hamlin
James M. Trusty
Ifrah Law, PLLC
1717 Pennsylvania Ave, N.W. Suite 650
Washington, DC 20006
george@ifrahlaw.com

sgarnett@bhfs.com
ahouseal@bhfs.com

jhamlin@ifrahlaw.com
jtrusty@ifrahlaw.com

*Counsel for Defendants Brian Watson, WDC Holdings, LLC, NSIPI Administrative Manager,
Sterling NCP FF, LLC, Manassas NCP FF, LLC*

s/ John David Thomas

John-David H. Thomas
(Lead Attorney) (Va. Bar No. 68714)
Andrew F. Solinger (Pro Hac Vice) (Tenn.
Bar No. 036943)
HOLLAND & KNIGHT, LLP
511 Union St., Suite 2700
Nashville, TN 37219
Telephone: (615) 850-8596
Facsimile: (615) 244-6804
JD.Thomas@hklaw.com
Andrew.Solinger@hklaw.com

/s/ Julie S. Palmer

Julie S. Palmer
Harman, Claytor, Corrigan & Wellman
P.O. Box 70280
Richmond, VA 23255
Tel: (804) 762-8027
Fax: (804) 747-6085
jpalmer@hccw.com

Counsel for Rodney Atherton

Counsel for Casey Kirschner